

On Friday, March 13, 2020, Plaintiff filed a proposed Case Management Plan and Scheduling Order, albeit not jointly with Defendant. Dkt. No. 14. Also on that date, Defendant requested to adjourn the conference the following Monday and for an extension of time to respond to the Complaint. Dkt. No. 16. The Court granted this request and adjourned the conference (to be held telephonically) and the deadline for Defendant's response to April 13, 2020. Dkt. No. 17. Plaintiff did not receive notice of the adjournment in advance of the March 16 conference and appeared at the courthouse for the conference. A member of Chambers staff informed Plaintiff of the new conference date of April 13.

On Friday, April 10, 2020, Defendant requested to adjourn the conference the following Monday and for a second extension of time to respond to the Complaint. Dkt. No. 19. The Court denied the request to adjourn but granted the extension. Dkt. No. 20. Defendant did not appear at the conference, and the Court adjourned the conference to June 1, 2020. Dkt. No. 21.

On May 14, 2020, Defendant asked for a third extension of time to respond to the Complaint. Dkt. No. 22. The Court granted the request and set a deadline of June 17, 2020. Dkt. No. 23. The Court also adjourned the conference to June 30, 2020. *Id.*

Defendant now brings a letter motion to dismiss for lack of prosecution or alternatively, a fourth extension of time to file the motion to dismiss on the merits in twenty (20) days after the Court's decision on the letter motion. Dkt. Nos. 24-25. The motion seeks to dismiss the Complaint for Plaintiff's alleged failure to maintain his current mailing address, yet Defendant offers no evidence that correspondence sent to that address is undeliverable or has been returned. Defendant has not further established that Plaintiff has "abandoned this action." Dkt. No. 25 at 3; *see Baptiste v. Sommers*, 768 F.3d 212, 216 (2d Cir. 2014).


In light of the foregoing, the motion to dismiss for failure to prosecute is DENIED. Defendant is directed to make its motion to dismiss for failure to state a claim within twenty (20) days of this Order, or July 7, 2020. Plaintiff shall file his opposition by August 18, 2020, and Defendant shall file its reply, if any, by September 1, 2020.

The Clerk of Court is respectfully directed to close Dkt. Nos. 24, 25.

The Court will mail a copy of this Order to Plaintiff.

SO ORDERED.

Dated: June 17, 2020  
New York, New York

  
LEWIS J. LIMAN  
United States District Judge